

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Communications Assistance for)	ET Docket No. 04-295
Law Enforcement Act and)	
Broadband Access and Services)	RM-10865
 To: The Commission		

COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association (“RCA”)¹, by its attorneys, respectfully submits these Comments in response to the invitation of the Federal Communications Commission (“FCC” or “Commission”) to comment on matters relevant to a Joint Petition for Expedited Rulemaking filed by the Department of Justice, the Federal Bureau of Investigation (“FBI”), and the Drug Enforcement Agency (collectively, “Law Enforcement”) regarding implementation and enforcement issues of the Communications Assistance for Law Enforcement Act (“CALEA”).² Among other matters, the FCC invited input on the effect of CALEA requirements on small carriers, particularly regarding implementation cost recovery.

Introduction

The cost of CALEA implementation and the delay it causes to small wireless system upgrades have been a source of concern for the past several years. The Commission’s *NPRM* offers

1 RCA is an association representing the interests of approximately 100 small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing wireless service providers.

2 Notice of Proposed Rulemaking and Declaratory Ruling, ET Docket No. 04-295, FCC 04-187, released August 9, 2004 (“*NPRM*”).

practical solutions to technological and procedural issues. RCA welcomes the Commission's inquiry into this matter.

A. The FCC Should Mandate a Nationwide CALEA Subscriber Surcharge

As technology develops and telecommunications networks are upgraded, carriers face recurring CALEA costs that must be continually incorporated into normal business operations. This circumstance affects all carriers regardless of size or location, although small carriers have fewer subscribers to whom to pass through costs. Given the public benefits of CALEA-supported surveillance of criminals and terrorists, it is reasonable for the Commission to consider cost recovery devices that spread costs among the general public. RCA supports the Commission's suggestion of a mandated, flat, monthly subscriber charge.

Wireless carriers are permitted by FCC rules and policy to recover costs through line item charges, fees and surcharges on customers' bills.³ Their rates are not regulated by the states.⁴ However, small and rural carriers are less able to divide CALEA costs equitably among their subscribers than are large carriers. Furthermore, rural carriers receive far fewer requests for CALEA intercepts than do urban carriers. The costs of a nationwide system to support CALEA compliance therefore falls disproportionately upon rural wireless subscribers. A nationwide program for cost recovery to implement CALEA capabilities for the application of packet mode technologies would be a fair and reasonable solution to these inequities. Importantly, it would promote implementation

³ See, *In the Matter of Truth-in-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-72, 14 FCC Rcd 7492 (rel. May 11, 1999) ("*TIB Order*"). See also, *In the Matter of Federal-State Joint Board on Universal Service*, Docket No. 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329, 17 FCC Rcd 24952 (rel. Dec. 13, 2002) ("*Contribution Order*").

⁴ 47 U.S.C. § 332(c)(3)(a).

of packet-mode telecommunications services with CALEA capabilities, particularly in rural areas.

A nationwide cost recovery mechanism could consist of an invoice surcharge similar to the current subscriber line charge, as suggested by the Commission. The collected funds would cover the costs for carrier implementation of packet-mode capabilities certainly. The fund could also provide financial assistance for carrier circuit-mode implementation, where required. Likewise, the fund could cover Law Enforcement's intercept provisioning costs in both circuit-mode and packet-mode contexts. The scope of CALEA-related costs can be assessed initially by an FCC authorized survey of manufacturers, support service providers and carriers. The results would be used to calculate the amount required to be maintained in the CALEA fund, and the monthly amount to itemize on subscriber invoices.

The national surcharge to fund CALEA must be mandatory. Wireless carriers should not be permitted to opt out of placing the CALEA line item on subscriber invoices. All subscribers should see the line item on their wireless invoices, no matter which carrier they choose as their own. Otherwise the system will be manipulated for competitive purposes and consumers will be confused.

B. The FCC Should Establish a Small Carrier Safe Harbor for Packet-Mode Compliance

In the *NPRM* the Commission expresses a statutory interpretation that Section 107(c) extensions are limited to packet-mode functionalities that were deployed by carriers prior to October 25, 1998, and that Section 109(c) requests for cost relief or assistance must be based solely upon precisely identified costs and their effect on ratepayers.⁵ As the Commission suggests, it would be difficult for a carrier to demonstrate that it can afford to implement a new packet-mode system but cannot pay for the CALEA features attendant to the purchased facility. Furthermore, the time and

⁵ *NPRM*, at para. 97, *et seq.*

costs involved for a carrier to present a complete Section 109(c) petition to the Commission are substantial.

The Commission recognizes the heavy burden its statutory interpretation places on small and rural carriers. RCA therefore supports the FCC's proposal to develop a "safe harbor" provision defining CALEA standards for small and mid-size carriers, gauged perhaps according to standards negotiated among large carriers and equipment manufacturers. While any safe harbor is technologically temporary in nature, a protected period of five years may be sufficient to justify a small carrier's investment in a packet-mode facility that meets the safe harbor standard. In the alternative, equipment and facilities that were deployed within a safe harbor standard should be deemed CALEA compliant until such equipment and facilities are replaced or significantly upgraded.

RCA opposes Law Enforcement's suggestion that the Commission impose standardized CALEA compliance benchmarks for packet-mode services. Imposing uniform compliance dates upon all telecommunications carriers will stifle implementation of packet-mode services in rural areas. While carriers could riddle the FCC with extension requests, the exercise would slow deployment of new services and add uncertainty to carriers' business decisions.

C. RCA Supports the Carrier's Option to Use a Trusted Third Party

The FCC proposes that carriers be permitted to engage a service bureau, such as VeriSign or Fiducianet, Inc., to manage carriers' CALEA operations. The service bureau may have access to a customer carrier's network and remotely manage the intercept process for the carrier. Service bureaus may manage CALEA operations for multiple carriers, either from an external location or

from a mediation device within the carrier's network.

RCA agrees with the concept that carriers should be permitted to elect to use the services of service bureaus, even though such election would not relieve carriers of their obligation to comply with CALEA. The concern that manufacturers will withdraw from the development of CALEA compliance solutions is tempered by Subsection 106(b) of CALEA, which requires manufacturers to make available to their carrier customers the features and modifications necessary to permit such carriers to comply with the CALEA capability requirements.⁶

D. The FCC Should Continue to Process Circuit-Mode Extension Petitions

With regard to circuit-mode CALEA capabilities compliance, rural carriers have benefited from the Commission's consideration of Section 107(c) extension petitions and the FBI's Flexible Deployment Program ("Program"). The scheme has enabled carriers' circuit-based operations to become CALEA compliant on an economically manageable schedule that is acceptable to Law Enforcement. Many small and rural carriers remain enrolled in the Program and continue to receive FBI support for their proposed compliance schedules. RCA encourages the Commission to authorize additional Section 107(c) extensions based upon carrier participation in the Program, with FBI support serving as a proxy for what is "reasonably achievable" under Section 107(c). Carriers who do not participate in the Program should be permitted to file Section 107(c) extension petitions for circuit-mode facilities and have them considered under the criteria discussed on the *NPRM*, including showings of due diligence, plans for implementation, cost estimates and impact, history of intercept requests and other factors.

⁶ 47 U.S.C. § 1005(b), as noted in the *NPRM*, at para. 11.

Conclusion

RCA supports the Commission's initiative to address financial, procedural and other issues raised by Law Enforcement. RCA agrees that a national telecommunications subscriber surcharge should be imposed to recover the prospective costs of CALEA implementation and intercept provisioning, that packet-mode safe harbor standards should be established, that use of a trusted third-party should be permitted, and that circuit-mode extension petitions should continue to be processed by the Commission. These are the NPRM issues of most immediate concern to small and rural wireless carriers. The Commission's proposals are a practical means to alleviate the recognized burdens of CALEA. The proposals are supported by RCA.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

[filed electronically]

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